

happens, and if that cannot be done by reason of the frost, the council should close the road, and put up notices warning the public that it is dangerous. The public cannot suffer, as you state that another road can be used without much inconvenience. The council should notify A to spread the earth at once in the manner provided by the contract, and if he should neglect to do so, the council can have the work done and recover the cost of it from A. The cost would be the measure of damage resulting from his neglect to fulfil his contract.

What Voters' List Should be Used?—Appointment of Treasurer by Committee.

21.—M & L.—In my letter to you on the 5th inst., I was enquiring about which voters' list we should use in case of appeal.

1. Now I would like to know what procedure if any could be taken in order to use 1900 list for 1901 election, the list having been appealed?

2. The council has appointed a sewer and waterworks committee giving them power to act. This committee has appointed a clerk and a treasurer in the same person, who signed all cheques, received all moneys and in fact had absolute control of the finances without security. Could this man act as treasurer for that special committee when the town was paying another man as treasurer?

1. From our answer to question 13 in this issue you will observe that the voters' list for 1900 cannot be used in your municipality at the 1901 election, but that it must be prepared as provided by section 151 of the Municipal Act.

2. We cannot satisfactorily answer this question without a true copy of the resolution appointing the committee, before us. Simply giving the committee power to act would not authorize them to appoint a treasurer. If the town council has appointed a person to act as treasurer, he is the man to do the business, as the committee, being a subordinate body, cannot supersede the action of the council by appointing someone else.

Qualification for County Councillor—Farmer's Son—Legal Vote

22.—A. W.—1. Will a person who is now a reeve of a municipality be legally qualified to run as county councillor without first resigning his seat?

2. Is a farmer's son who is on the voters' list, legally qualified to vote at a municipal election, he having been working away from home seven months of the year?

3. Can a ratepayer legally vote at a municipal election if his assessment is under \$100.

1. Yes. See section 81 of the Municipal Act.

2. To entitle a farmer's son to vote at such an election, he must be a British subject by birth or naturalization, of the full age of twenty-one years, a resident of the municipality at the time of the election and must have resided on the property of his father or mother for twelve months next before the date of the final revision and correction of the assessment roll, or for twelve months prior to the last day for making complaints to the county judge under the Voters' List Act. See sub-section 1 of section 86 of the Municipal Act (Fourthly) and section 115 of the Act.

3. Section 87 of the Municipal Act provides that, in order to entitle a person to vote at a municipal election in respect of real property, such property whether freehold or leasehold or partly each, must be rated at an actual value in townships and villages of not less than \$100 and if an appeal were made in the case of a person assessed for less than \$100, to have his name struck off the voters' list, the name would be stricken off, but if no appeal were made no objection could be made afterwards against his right to vote, for those reasons. The latter part of section 89 of the Municipal Act provides that no question of qualification shall be raised at any election except to ascertain whether the person tendering his vote is the person intended to be designated in the list of voters, and all that the oath of a person claiming to vote as a freeholder, which is to be found under section 112, requires, is that such person shall swear that at the date of the election he is in his own right, or that of his wife, a freeholder within the polling sub-division, or within the ward, as the case may be, in the municipality.

Reeve Qualified as Candidate for County Councillor.

23.—H. J. F.—Is it necessary for a reeve of a township for 1900 to resign his position in order for him to run for the position of county commissioner for 1901?

No. Section 81, of The Municipal Act enacts as follows: "Any person having the necessary qualifications, and not otherwise disqualified, who is a member of a local municipal council, *for the year in which nominations are held*, for the election of members of the county council, shall be eligible for nomination and election as a member of the county council at such election.

Payment of Taxes by Note—Arrears of Taxes—Liability County Treasurer.

24.—THE COLLECTOR.—Landlord takes note at one year for full amount of rent, the landlord to pay taxes and do the statute labor. This he did in 1899. This year, 1900 did not pay any on taxes in arrears for 1892, 1895 and 1898.

1. Can tenant's goods be taken for arrears, the landlord having no chattels on place?

2. Is note legal?

3. Is county treasurer in any way responsible, for having let it run so long? It was a resident lot all the time.

1. If the tenant is assessed for the year 1900, and his name appears on the collector's roll for the same year, his goods are liable to seizure for the taxes for 1900, and it is the duty of the collector to seize them, or a sufficient part of them to make the taxes. If the collector's rolls for the prior years 1892, 1895, 1897 and 1898 have been returned, the collector has no power to collect the taxes for those years at all.

2. Yes.

3. If the taxes for the years mentioned, or any part of them, have been lost, through the negligence of the county treasurer, we do not see why he should not be held liable for the loss sustained, but you have

not furnished sufficient information to enable us to express an opinion upon the question, neither can we express an opinion as to whether these taxes can be recovered out of the lands, because you have not given us sufficient information upon that phase of the question to enable us to express an opinion upon the matter.

Should Take Proceedings Under the Ditches and Watercourses Act.

25.—R. F. What right has a person to drain a high farm down on an adjoining low farm? Can he do so, by carrying the water through the lower farm by drain at his own expense? Or will the man owning the lower farm have to bear one-half the expense?

The owner of the upper lands cannot drain them on and through the lower lands, if the owner of the latter objects, unless he acquires the right to do so under The Ditches and Watercourses Act. Chapter 285, R. S. O., 1897.

Voting on Statute Labor By-Law—Commutation of Unassessed Persons.

26 H. S. M.—Our township is going to take a vote at the next election on the abolition of statute labor. There is a village in the township which is incorporated under the "Badgerow Act" which gives them commutation.

1. Have they a right to vote for or against commutation or abolition?

2. If statute labor is abolished what powers have council with regard to parties who are not assessed but now do two days statute labor, the M. F. voters?

1. We can find no provision in the Municipal or Assessment Acts authorizing a municipal council to submit the question of the abolition of statute labor to the electors. The council itself has full power to pass a by-law for the abolition of statute labor. See section 103 of The Assessment Act, and sub-section 4, of section 561, of The Municipal Act. In the case of Darby vs. the City of Toronto, 17, O. R., 561, Mr. Justice Osler made the following observations upon the practice resorted to of taking a plebiscite: "I cannot see what this has to do with the case. It is another instance of a pernicious practice which has been too frequently resorted to, of taking a *plebiscite* upon a subject wholly within the discretion of the council, which it is their duty to decide and to take the responsibility of deciding themselves, without putting the public to expense. In this case, it is true, no additional expense will be incurred, as there is also a by-law to be voted on, but the practice is none the less objectionable as an attempt to evade responsibility and place it where it does not belong." As the law does not provide for submitting such a question to a vote of the electors, neither the electors of the village nor township have a legal right to vote. The Act, which you refer to as "The Badgerow Act," is section 37, of The Municipal Act, and if you will examine that section you will find that the township council, where a village has been set apart under section 37, has all the rights and privileges conferred by The Municipal Act upon the councils of cities, towns and villages to require a commutation tax to be paid in lieu of statute labor.